

**2003 No. 250**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (General Dental Services  
Supplementary List) and (General Dental Services)  
Amendment Regulations 2003**

*Made - - - - - 7th February 2003*

*Laid before Parliament 10th February 2003*

*Coming into force:*

*except for regulations 3(1)  
and 22(1), 3rd March 2003*

*regulation 22(1) 1st April 2003*

*regulation 3(1) 3rd September 2003*

The Secretary of State, in exercise of the powers conferred upon him by sections 8, 35, 36, 37(1C), 43D, 49N and 126(4) of the National Health Service Act 1977(a) and section 65 of the Health and Social Care Act 2001(b), and all other powers enabling him in that behalf, hereby makes the following Regulations:

**Citation, commencement and application**

1.—(1) These Regulations may be cited as the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003 and shall come into force on 3rd March 2003, except for:

- (a) regulation 22(1), which shall come into force on 1st April 2003; and
- (b) regulation 3(1), which shall come into force on 3rd September 2003.

(2) These Regulations apply to England only.

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(a) 1977 c. 49; see section 128(1), as amended by the National Health Service and Community Care Act 1990 (c. 19) (“the 1990 Act”), section 26(2)(g) and (i), for the definitions of “prescribed” and “regulations”. Section 35 was amended by the Health and Social Services and Social Security Adjudications Act 1983 (c. 41), section 15(a); by the Dentists Act 1984 (c. 24), section 54(1) and Schedule 5, paragraph 8; by S.I. 1985/39, article 7(9); by the Health Authorities Act 1995 (c. 17) (“the 1995 Act”), section 2(1) and Schedule 1, Pt I paragraphs 1 and 24; by the National Health Service (Primary Care) Act 1997 (c. 46) (“the 1997 Act”), Schedule 2, paragraphs 70 and 72 and by the National Health Service Reform and Health Care Professions Act 2002 (c. 17) (“the 2002 Act”), Schedule 2, paragraph 9. Section 36 was amended by S.I. 1981/432, article 3(3)(a); by the Health and Social Security Act 1984 (c. 48), Schedule 3 paragraph 5; by the Health and Medicines Act 1988 (c. 26), (“the 1988 Act”), Schedule 2, paragraphs 1 and 4; by the 1990 Act, section 24; by the 1995 Act, Schedule 1, paragraphs 1 and 25; by the 1997 Act, Schedule 2, paragraphs 3, 12, 70 and 72; by the Health Act 1999 (c. 8) (“the 1999 Act”), section 93(3); by the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”), sections 20, 22 and 23, and by the 2002 Act, Schedule 2, paragraph 10. Section 37(1C) was inserted by the 1988 Act, section 12(3). Section 43D was inserted by the 2001 Act, section 24 and amended by the 2002 Act, Schedule 2, paragraph 20. Section 49N was inserted by the 2001 Act, section 25 and amended by the 2002 Act, Schedule 2, paragraph 25. Section 126(4) was amended by the 1990 Act, section 65(2); by the 1999 Act, Schedule 4, paragraph 37(6) and by the 2001 Act, Schedule 5, paragraph 5(13)(b). As regards Wales, the functions of the Secretary of State under sections 29 and 126(4) of the 1977 Act are transferred to the National Assembly for Wales under article 2 of, and Schedule 1 to, the National Assembly for Wales (Transfer of Functions) Order 1999, S.I. 1999/672; section 68 of the 2001 Act provides that Schedule 1 shall be construed so as to include the amendments made by that Act to the 1977 Act, which is section 43D; these Regulations therefore extend only to England.

(b) 2001 c. 15.

# PART I

## Interpretation

2.—(1) In this Part, unless the context otherwise requires—

“Abolition of the Tribunal Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2001(a);

“Abolition of the Tribunal (Wales) Regulations” means the Abolition of the National Health Service Tribunal (Consequential Provisions) Regulations 2002(b);

“contingent removal” shall be construed in accordance with section 49G(c);

“dental list” means the list prepared by a Primary Care Trust under regulation 4 of the Dental Regulations(d);

“the Dentists Register” means the register of dentists kept by virtue of section 14 of the Dentists Act;

“Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992(e);

“dentist” means a registered dental practitioner;

“Dentists Act” means the Dentists Act 1984(f);

“director” means—

(a) a director of a body corporate; or

(b) a member of the body of persons controlling a body corporate (whether or not a limited liability partnership);

“employment” means any employment, whether paid or unpaid and whether under a contract for services or a contract of service, and “employed” and “employer” shall be construed accordingly;

“equivalent body” means a Health Authority in Wales, a Health Board or an NHS Trust in Scotland or a Health and Social Services Board in Northern Ireland or, in relation to any time prior to 1st October 2002, a Health Authority in England;

“equivalent list” means a list kept by an equivalent body;

“FHSAA” means the Family Health Services Appeal Authority constituted under section 49S(g);

“fraud case” means a case where a person satisfies the second condition for removal from the dental list, set out in section 49F(3)(h) or by virtue of section 49H is treated as doing so;

“Health Committee” means the Health Committee of the General Dental Council constituted under section 2(4) of the Dentists Act;

“licensing or regulatory body” means the body that licenses or regulates any profession of which the dentist is, or has been a member, and includes any body which licences or regulates any such profession outside the United Kingdom;

“list” means a supplementary list, a dental list or a services list;

“a national disqualification” means a decision—

(a) made by the FHSAA to nationally disqualify a dentist under section 49N;

(b) to nationally disqualify a dentist under provisions in force in Scotland or Northern Ireland corresponding to section 49N; or

(c) by the Tribunal, which is treated as a national disqualification by the FHSAA by virtue of regulation 6(4)(b) of the Abolition of the Tribunal Regulations or regulation 6(4)(b) of the Abolition of the Tribunal (Wales) Regulations;

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(a) S.I. 2001/ 3744.

(b) S.I. 2002/1920.

(c) Sections 49G to 49R were inserted by section 25 of the 2001 Act and amended by the 2002 Act, Schedule 2, paragraphs 21 to 28.

(d) S.I. 1992/661; relevant amendments to regulation 4 are S.I. 1995/3092, 1998/1648, 2001/289, 2421, 2706, 3741, 3963 and 2002/2469.

(e) S.I. 1992/661.

(f) 1984 c. 24.

(g) Section 49S was inserted by the 2001 Act, section 27(1) and amended by the 2002 Act, Schedule 1, paragraph 18.

(h) Sections 49F and 49H were inserted by the 2001 Act, section 25; section 49F was amended by the 2002 Act, Schedule 2, paragraph 21.

“the NCAA” means the National Clinical Assessment Authority established as a Special Health Authority under section 11(a);

“the National Health Service Counter Fraud Service” means the service provided by the Secretary of State to deal with inquiries and investigations in relation to any allegations of fraud or corruption in the health service(b);

“originating events” means the events that gave rise to the conviction, investigation, proceedings, suspension, refusal to admit, conditional inclusion, removal or contingent removal that took place;

“Preliminary Proceedings Committee” means the Preliminary Proceedings Committee of the General Dental Council constituted under section 2(1) of the Dentists Act;

“professional conduct” includes matters relating both to professional conduct and professional performance;

“Professional Conduct Committee” means the Professional Conduct Committee of the General Dental Council constituted under section 2(2) of the Dentists Act;

“Primary Care Act” means the National Health Service (Primary Care) Act 1997(c);

“professional registration number” means the number against the dentist’s name in the Dentists Register;

“services list” means a list prepared under section 28DA(d) or section 8ZA of the Primary Care Act(e);

“suspended” means—

(a) suspended by a Primary Care Trust or Health Authority under section 49I or 49J, regulations made under sections 28DA or 43D, including these Regulations, or section 8ZA of the Primary Care Act,

(b) in relation to Scotland or Northern Ireland, suspended under provisions in force corresponding to those in sections 49I or 49J,

and shall be treated as including a case where a person is treated as suspended by a Primary Care Trust or, prior to 1st October 2002, a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal Regulations, or by a Health Authority by virtue of regulation 6(2) of the Abolition of the Tribunal (Wales) Regulations, and “suspends” and “suspension” shall be construed accordingly;

“the Tribunal” means the Tribunal constituted under section 46(f) for England and Wales, and which, except for prescribed cases, had effect in relation to England only until 14th December 2001 and in relation to Wales only until 26th August 2002(g).

(2) All references in these Regulations to sections are to sections of the National Health Service Act 1977, except where specified otherwise.

### **Supplementary list**

3.—(1) A Primary Care Trust shall prepare and publish a supplementary list of all dentists approved by the Primary Care Trust for the purposes of assisting in the provision of general dental services.

(2) Subject to regulation 21 and paragraph (3), unless a dentist’s name is included in a supplementary list, a dental list or a services list he may not assist in the provision of general dental services.

(3) Paragraph (2) does not apply to a dentist who is undertaking vocational training during the first two months of that training.

(4) In respect of any dentist whose name is included in it, a supplementary list shall include—

(a) the dentist’s full name;

(b) his professional registration number;

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(a) The NCAA was established by S.I. 2000/2961.

(b) The National Health Service Counter Fraud Service may be contacted by writing to them at Hannibal House, Elephant and Castle, London SE1 6TE, or e-mailing them on DCFS@doh.gov.uk.

(c) 1997 c. 46.

(d) Section 28DA was inserted by section 26(1) of the 2001 Act.

(e) Section 8ZA was inserted by the 2001 Act and amended by the 2002 Act, Schedule 3, paragraph 3.

(f) Section 46 was substituted by the Health Act 1999 c. 8.

(g) See S.I. 2001/3738, article 2(5) and (6)(b), which sets out the prescribed cases for England and S.I. 2002/1919, article 2(2) and (3)(b), which sets out the prescribed cases for Wales.

- (c) his date of birth, where he consents, or if not, his date of first registration in the Dentists Register; and
- (d) the date that the dentist's name was included in the supplementary list.

(5) The supplementary list shall be available for public inspection.

(6) In paragraph (3) "vocational training" means a period of one year's full time employment (or an equivalent period of part-time employment) during which a dentist is employed under a contract of service by an approved trainer to provide a wide range of dental care and treatment and to attend such study days as that contract requires with the aim and objectives set out respectively in paragraphs 1 and 2 of Schedule 1A to the Dental Regulations(a).

#### **Application for inclusion in the supplementary list**

4.—(1) Subject to paragraphs (8) and (9), an application by a dentist for the inclusion of his name in the supplementary list shall be made by sending the Primary Care Trust an application in writing, which shall include the information mentioned in paragraph (2), the undertakings and consents required by paragraphs (3) and (6) and any declaration required under paragraph (1), (4) or (5).

(2) The dentist shall provide the following information—

- (a) his full name;
- (b) his sex;
- (c) his date of birth;
- (d) his private address and telephone number;
- (e) a declaration that he is a fully registered dentist included in the Dentists Register;
- (f) his professional registration number and date of first registration in the Dentists Register;
- (g) chronological details of professional experience (including the starting and finishing dates of each appointment together with an explanation of any gaps between appointments) and any additional supporting particulars, including whether that experience was in the provision of general dental services (whether as a principal or assistant) and an explanation of why he was dismissed from any post;
- (h) names and addresses of two referees who are willing to provide clinical references relating to two recent posts (which may include any current post) as a dentist which lasted at least three months without a significant break, and where this is not possible, a full explanation and the names and addresses of alternative referees;
- (i) the name and address of the principal dentist who, or the body which, proposes to employ him as an assistant in the provision of general dental services and whether or not that name is included in a Primary Care Trust's dental list and, if that person has partners, associates or directors, the names and addresses of any such persons;
- (j) whether the general dental services, which he is to assist in providing, are restricted to orthodontic treatment; and
- (k) has any outstanding application, including a deferred application, to be included in a list or an equivalent list.

(3) The dentist shall provide the following undertakings and consent—

- (a) undertaking to provide the declarations and documents required by regulation 9;
- (b) undertaking to provide general dental services when employed as an assistant;
- (c) undertaking not to assist in providing general dental services in the area of another Primary Care Trust or equivalent body from whose supplementary, dental or services list he has been removed, except where that removal was at his request or in accordance with regulation 10(7), without the consent, in writing, of that Primary Care Trust;
- (d) undertaking to notify the Primary Care Trust within 7 days of any material changes to the information provided in the application until the application is finally determined;
- (e) undertaking to notify the Primary Care Trust if he is included, or applies to be included, in any other list held by a Primary Care Trust or equivalent body; and

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(a) Schedule 1A was inserted by S.I. 1993/2209.

- (f) consent to the disclosure of information in accordance with regulation 9.
- (4) The dentist shall send with the application a declaration as to whether he—
- (a) has any criminal convictions in the United Kingdom;
  - (b) has been bound over following a criminal conviction in the United Kingdom;
  - (c) has accepted a police caution in the United Kingdom;
  - (d) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> or a penalty under section 115A of the Social Security Administration Act 1992<sup>(b)</sup>;
  - (e) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
  - (f) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
  - (g) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
  - (h) has been subject to any investigation into his professional conduct by any licensing, regulatory or other body, where the outcome was adverse;
  - (i) is currently subject to any investigation into his professional conduct by any licensing, regulatory or other body;
  - (j) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to fraud;
  - (k) is the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any of that Primary Care Trust's lists or any equivalent lists;
  - (l) is, or has been where the outcome was adverse, the subject of any investigation into his professional conduct in respect of any current or previous employment;
  - (m) has been removed, contingently removed, refused admission to, or conditionally included in any list or equivalent list kept by another Primary Care Trust or equivalent body, or is currently suspended from such a list and if so, why and the name of that Primary Care Trust or equivalent body; or
  - (n) is, or has ever been, subject to a national disqualification,
- and, if so, he shall give details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(5) If the dentist is, has in the preceding six months been, or was to his knowledge at the time of the originating events a director of a body corporate, he shall in addition make a declaration to the Primary Care Trust as to whether the body corporate—

- (a) has any criminal convictions in the United Kingdom;
- (b) has been convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (c) is currently the subject of any proceedings which might lead to such a conviction, which have not yet been notified to the Primary Care Trust;
- (d) has been subject to any investigation into its provision of professional services by any licensing, regulatory or other body, where the outcome was adverse;
- (e) is currently subject to any investigation into its provision of professional services by any licensing, regulatory or other body; or
- (f) is to his knowledge, or has been where the outcome was adverse, the subject of any investigation by the National Health Service Counter Fraud Service in relation to fraud;

and, if so, he shall give the name and registered office of the body corporate and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

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(a) 1995 c. 46.

(b) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(6) The dentist shall consent to a request being made by the Primary Care Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist or a body corporate referred to in paragraphs (2), (4) and (5).

(7) If, in the case of any application, the Primary Care Trust finds that the information, references or documentation supplied by the dentist are not sufficient for it to decide his application, it shall seek from that dentist such further information, references or documentation as it may reasonably require in order to make a decision and that dentist shall supply the material so sought to the Trust.

(8) Subject to regulation 21, the Primary Care Trust shall decide whether the dentist is to be included, (whether conditionally or otherwise) in its supplementary list, or decide to defer that decision under regulation 7, within the period of 21 days beginning with the date on which all the information, references or documentation required by these Regulations or otherwise necessary to make its decision have been received by that Trust.

(9) In the case of an application to a Primary Care Trust by a dentist, who is included in the dental list or the services list of that Trust, seeking to withdraw from that list and to include his name in its supplementary list, that dentist shall only be required to provide the information required by paragraph (2) insofar as—

- (a) he has not already supplied it to that Trust; or
- (b) it has changed since it was provided.

### **Readmission**

5.—(1) Where a dentist has been removed from any list by a Primary Care Trust on the grounds that he had been convicted of a criminal offence, and that conviction is overturned on appeal, that Primary Care Trust may agree to include the dentist in its supplementary list without a full application if it—

- (a) is satisfied that there are no other matters that need to be considered; and
- (b) has received an undertaking from the dentist to comply with the requirements of these Regulations.

(2) In a case to which paragraph (1) applies, if the conviction is reinstated on a further appeal, the previous determination of the Primary Care Trust to remove that dentist from its supplementary list shall once again have effect.

### **Grounds for refusal**

6.—(1) The grounds on which a Primary Care Trust may refuse to include a dentist in its supplementary list are that—

- (a) the Primary Care Trust, having considered the declaration required by regulation 4(4) and (if applicable) regulation 4(5), and any other information or documents in its possession relating to the dentist, considers that he is unsuitable to be included in its supplementary list;
- (b) having checked the information provided by the dentist under regulation 4(2)(e), (f) and (g) the Primary Care Trust consider the dentist is unsuitable to be included in its supplementary list;
- (c) having contacted the referees provided by the dentist under regulation 4(2)(h), the Primary Care Trust are not satisfied with the references;
- (d) having checked with the National Health Service Counter Fraud Service for any facts that it considers relevant relating to past or current fraud investigations involving or related to the dentist and, having considered these and any other facts in its possession relating to fraud involving or relating to the dentist, the Primary Care Trust consider these justify such refusal;
- (e) there are any grounds for considering that admitting the dentist to its supplementary list would be prejudicial to the efficiency of the service which he would undertake; or
- (f) his registration in the Dentists Register is subject to conditions imposed by the Health Committee under section 28 of the Dentists Act.

(2) The grounds on which a Primary Care Trust must refuse to include a dentist in its supplementary list are—

- (a) that he has not provided general dental services in its area during three of the previous six months, nor has he provided satisfactory evidence that he intends to provide such services in its area;
- (b) that he is included in the dental list or services list of a Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
- (c) that he is included in the supplementary list of another Primary Care Trust, unless he has given notice in writing to that Trust that he wishes to withdraw from that list;
- (d) that it is not satisfied that he has the knowledge of English which, in his own interests or those of his patients, is necessary in assisting in the provision of general dental services in its area;
- (e) where he has been convicted in the United Kingdom of murder;
- (f) where he has been convicted in the United Kingdom of a criminal offence, committed on or after 3rd March 2003, and has been sentenced to a term of imprisonment of over six months;
- (g) where he has been nationally disqualified;
- (h) where he has not updated his application in accordance with regulation 7(4); or
- (i) where, in a case to which regulation 15(4) applies, he does not notify the Primary Care Trust under regulation 15(5) that he wishes to be included in its supplementary list subject to the specified conditions.

(3) Before making a decision on the application, the Primary Care Trust shall check—

- (a) as far as reasonably practicable, the information provided by the dentist, in particular that provided under regulations 4(2)(e), (f) and (g), 4(4), and (if applicable) 4(5), and shall ensure that it has sight of relevant documents; and
- (b) with the National Health Service Counter Fraud Service whether the dentist has any record of fraud.

(4) Where the Primary Care Trust is considering a refusal under paragraph (1) or (2) it shall consider all facts which appear to it to be relevant, and shall in particular take into consideration in relation to paragraph (1)(a), (d) or (e) above—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any offence, incident, conviction or investigation;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action or penalty imposed by any licensing, regulatory or other body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, investigation or incident to the provision by him of general dental services and any likely risk to his patients or to public finances;
- (f) whether any offence was a sexual offence to which Part I of the Sexual Offences Act 1997(a) applies, or if it had been committed in England or Wales, would have applied; and
- (g) whether he has been refused admission to or conditionally included in, removed, contingently removed or is currently suspended from any Primary Care Trust's list or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action.

(5) When the Primary Care Trust takes into consideration any of the matters set out in paragraph (4), they shall consider the overall effect of all the matters being considered.

(6) When refusing to include a dentist in its supplementary list, the Primary Care Trust shall notify the dentist of its decision and the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15 against the Primary Care Trust's decision.

#### **Deferment of decision on application**

7.—(1) A Primary Care Trust may defer a decision on an application to be included in the supplementary list, where—

- (a) there are, in respect of the dentist—

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(a) 1997 c. 51.

- (i) criminal proceedings in the United Kingdom, or
- (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,

which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the removal of the dentist from the Primary Care Trust's supplementary list, if he had been included in it;

- (b) in respect of a body corporate of which the dentist is, has in the preceding 6 months been, or was at the time of the originating events, a director there are—
  - (i) criminal proceedings in the United Kingdom, or
  - (ii) proceedings elsewhere in the world relating to conduct, which, if it had occurred in the United Kingdom, would constitute a criminal offence,

which, if they resulted in a conviction, or the equivalent of a conviction, would be likely to lead to the removal of the dentist from the Primary Care Trust's supplementary list, if he had been included in it;

- (c) there is an investigation anywhere in the world by the dentist's licensing or regulatory body or any other investigation (including one by another Primary Care Trust or equivalent body) relating to him in his professional capacity that, if adverse, would be likely to lead to the removal of the dentist from the Primary Care Trust's supplementary list, if he had been included in it;
- (d) the dentist is suspended from any list or any equivalent list;
- (e) the FHSAA is considering an appeal by the dentist against a decision of a Primary Care Trust to refuse to approve, nominate or admit him to its supplementary list, or to conditionally include him in or to contingently remove him from, or to remove him from any list kept by a Primary Care Trust and if that appeal is unsuccessful the Primary Care Trust would be likely to remove him from the Primary Care Trust's supplementary list if he had been included in it;
- (f) the dentist is being investigated by the National Health Service Counter Fraud Service in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the dentist from the Primary Care Trust's supplementary list if he had been included in it;
- (g) a body corporate, of which the dentist is, has in the preceding six months been, or was at the time of the originating events a director, is being investigated in relation to any fraud, where the result, if adverse, would be likely to lead to the removal of the dentist from the Primary Care Trust's supplementary list if he were to be included in it; and
- (h) the FHSAA is considering an application from a Primary Care Trust for a national disqualification of the dentist.

(2) A Primary Care Trust may only defer a decision under paragraph (1) above until the outcome of the relevant event mentioned in sub-paragraphs (a) to (h) is known.

(3) The Primary Care Trust must notify the dentist that it has deferred a decision on the application and the reasons for it.

(4) Once the outcome of the relevant event mentioned in paragraph (1) is known, the Primary Care Trust shall notify the dentist in writing that he must within 28 days of the date of the notification (or such longer period as the Primary Care Trust may agree)—

- (a) update his application; and
- (b) confirm in writing that he wishes to proceed with his application.

(5) Provided any additional information has been received within the 28 days or the time agreed, the Primary Care Trust shall notify the dentist as soon as possible—

- (a) that his application to be included has been successful; or
- (b) that the Primary Care Trust has decided to refuse the application or impose conditions on his inclusion, and the reasons for that (including any facts relied upon), and any right of appeal under regulation 15.



### **Conditional inclusion**

8.—(1) A Primary Care Trust may determine that, if a person is to be included in the supplementary list, he is to be subject, while he remains included in that list, to the imposition of conditions, having regard to the requirements of section 43D(5) (purpose of conditions).

(2) If a dentist fails to comply with a condition, which has been imposed by the Primary Care Trust, it may remove him from its supplementary list.

(3) Where the Primary Care Trust is considering the removal of a dentist from its supplementary list for breach of a condition, it shall give him—

- (a) notice of any allegation against him;
- (b) notice of the grounds for the action it is considering;
- (c) the opportunity to make written representations to the Primary Care Trust within 28 days of the date of the notification under sub-paragraph (b);
- (d) the opportunity to put his case at an oral hearing before the Primary Care Trust, if he requests one within the 28 day period mentioned in sub-paragraph (c).

(4) If there are no representations within the period specified in paragraph (3)(c), the Primary Care Trust shall inform the dentist of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(5) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the dentist of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) any right of appeal under regulation 15,

within 7 days of making that decision.

(6) If the dentist requests an oral hearing, this must take place before the Primary Care Trust reaches its decision and the Primary Care Trust must then notify the dentist of—

- (a) its decision and the reasons for it (including any facts relied upon); and
- (b) of any right of appeal under regulation 15,

within 7 days of making that decision.

(7) When the Primary Care Trust notifies the dentist of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which the Primary Care Trust informed him of its decision and shall tell him how to proceed with any appeal.

(8) The Primary Care Trust shall also notify the dentist of his right to have the decision reviewed in accordance with regulation 14.

(9) Where the Primary Care Trust determines that a dentist—

- (a) may be included in its supplementary list, but subject to conditions imposed under this regulation; or
- (b) is to be subject to conditions while he remains included in its supplementary list,

the name of the dentist may be included (or continue to be included) in its supplementary list during the period for bringing the appeal to the FHSAA pursuant to regulation 15, or if an appeal is brought, until such time as that appeal has been decided, provided the dentist agrees to be bound by the conditions imposed until the time for appeal has expired or the appeal is decided.

### **Requirements with which a dentist in the supplementary list must comply**

9.—(1) A dentist, who is included in the supplementary list of a Primary Care Trust, shall make a declaration to that Trust in writing within 7 days of its occurrence if he—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is bound over following a criminal conviction in the United Kingdom;
- (c) accepts a police caution in the United Kingdom;

- (d) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995<sup>(a)</sup> or a penalty under section 115A of the Social Security Administration Act 1992<sup>(b)</sup>;
- (e) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);
- (f) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (g) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (h) is notified by any licensing, regulatory or other body, of the outcome of any investigation into his professional conduct, and there is a finding against him;
- (i) becomes the subject of any investigation into his professional conduct by any licensing, regulatory or other body;
- (j) becomes subject to an investigation into his professional conduct in respect of any current or previous employment, or is notified of the outcome of any such investigation if adverse;
- (k) becomes to his knowledge the subject of any investigation by the National Health Service Counter Fraud Service in relation to fraud, or is notified of the outcome of such an investigation, where it is adverse;
- (l) becomes the subject of any investigation by another Primary Care Trust or equivalent body, which might lead to his removal from any of that Primary Care Trust's lists or equivalent lists; or
- (m) is removed, contingently removed or suspended from, refused admission to, or conditionally included in any list kept by another Primary Care Trust or any equivalent list kept by an equivalent body,

and, if so, he shall give details, including approximate dates, and where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

(2) A dentist, who is included in the supplementary list of a Primary Care Trust, and is, was in the preceding six months, or was to his knowledge at the time of the originating events a director of a body corporate, shall make a declaration to that Trust in writing within 7 days of its occurrence if that body corporate—

- (a) is convicted of any criminal offence in the United Kingdom;
- (b) is convicted elsewhere of an offence, or what would constitute a criminal offence if committed in England and Wales, or is subject to a penalty which would be the equivalent of being bound over or cautioned;
- (c) is charged in the United Kingdom with a criminal offence, or is charged elsewhere with an offence which, if committed in England and Wales, would constitute a criminal offence;
- (d) is notified by any licensing, regulatory or other body, of the outcome of any investigation into its provision of professional services, and there is a finding against the body corporate;
- (e) becomes the subject of any investigation into its provision of professional services by any licensing, regulatory or other body; or
- (f) becomes to his knowledge the subject of any investigation in relation to fraud, or is notified of the outcome of such an investigation if adverse,

and, if so, he shall give the name and registered address of the body corporate and details, including approximate dates, of where any investigation or proceedings were or are to be brought, the nature of that investigation or proceedings, and any outcome.

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(a) 1995 c. 46.

(b) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(3) A dentist, who is included in the supplementary list of a Primary Care Trust, shall consent to a request being made by that Trust to any employer or former employer, licensing, regulatory or other body in the United Kingdom or elsewhere, for information relating to a current investigation, or an investigation where the outcome was adverse, by them into the dentist or a body corporate referred to in paragraph (1) and (2).

(4) A dentist, who is included in the supplementary list of a Primary Care Trust, shall supply that Trust with an enhanced criminal record certificate under section 115 of the Police Act 1997(a) in relation to himself, if the Primary Care Trust at any time, for reasonable cause, requests him to provide such a certificate.

### **Removal from supplementary list**

**10.—(1)** The Primary Care Trust must remove the dentist from its supplementary list where it becomes aware that he—

- (a) has been convicted in the United Kingdom of murder;
- (b) has been convicted in the United Kingdom of a criminal offence, committed on or after 3rd March 2003, and has been sentenced to a term of imprisonment of over six months;
- (c) has been nationally disqualified;
- (d) has died;
- (e) is no longer a dentist;
- (f) is the subject of—
  - (i) a determination given by the Professional Conduct Committee under section 27 of the Dentists Act,
  - (ii) an order or direction made by that Committee or the Health Committee under section 28(1)(a) or (3)(a) (powers of the Health Committee) or 30(3) of that Act (order for immediate suspension), or
  - (iii) an order by the Preliminary Proceedings Committee under section 32 of that Act (interim suspension); or
- (g) is included in the dental list or services list of any Primary Care Trust, or the supplementary list of another Primary Care Trust.

(2) Where a Primary Care Trust is notified by the FHSAA that it has considered an appeal by a dentist against—

- (a) a contingent removal by the Primary Care Trust and has decided to remove him instead; or
- (b) a conditional inclusion, where the dentist has been conditionally included in the list until the appeal has been decided, and has decided not to include him,

the Primary Care Trust shall remove the dentist from its supplementary list and shall notify the dentist immediately that it has done so.

(3) The Primary Care Trust may remove a dentist from its supplementary list where any of the conditions set out in paragraph (4) is satisfied.

(4) The conditions mentioned in paragraph (3) are that the—

- (a) continued inclusion of that dentist in the supplementary list would be prejudicial to the efficiency of the services which those included in the list assist in providing (“an efficiency case”);
- (b) dentist (whether on his own or together with another) is involved in a fraud case in relation to any health scheme; or
- (c) dentist is unsuitable to be included in that list (“an unsuitability case”).

(5) For the purposes of this regulation, in addition to the services covered by the definition of “health scheme” in section 49F(8), the following shall also be health schemes—

- (a) health services, including dental treatment, provided by Her Majesty’s Forces;
- (b) services provided by Port Health Authorities constituted under the Public Health (Control of Disease) Act 1984(b);

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(a) 1997 c. 50.  
(b) 1984 c. 22.

- (c) dental services provided to a prisoner in the care of the dental officer or other such officer of a prison appointed for the purposes of section 7 of the Prison Act 1952(a);
  - (d) publicly-funded health services provided by or on behalf of any organisation anywhere in the world.
- (6) A Primary Care Trust may also remove a dentist if it decides he—
- (a) is in breach of a condition imposed on him on inclusion in the supplementary list under regulation 8;
  - (b) has failed to comply with a condition imposed on a contingent removal under regulation 12; or
  - (c) has failed to comply with a condition imposed on a contingent removal by the FHSAA under regulation 15(6).
- (7) Where the dentist cannot demonstrate that he has assisted in the provision of general dental services within the area of the Primary Care Trust during the preceding twelve months, the Primary Care Trust may remove him from its supplementary list.
- (8) In calculating the period of twelve months referred to in paragraph (7), the Primary Care Trust shall disregard any period during which—
- (a) his registration as a dental practitioner was suspended as mentioned in section 28 of the Dentists Act (suspension by direction or order of the Health Committee) or by interim order of the Preliminary Proceedings Committee under section 32 of that Act;
  - (b) he was suspended by virtue of section 30(3) of the Dentists Act; or
  - (c) he was suspended under these Regulations.
- (9) Where a Primary Care Trust is considering removing a dentist from its supplementary list under paragraphs (3) to (7) or contingently removing a dentist under regulation 12, it shall give him—
- (a) notice in writing of any allegation against him;
  - (b) notice of what action the Primary Care Trust is considering and on what grounds;
  - (c) the opportunity to make written representations to the Primary Care Trust within 28 days of the date of the notification under sub-paragraph (b); and
  - (d) the opportunity to put his case at an oral hearing before the Primary Care Trust, if he so requests, within the 28 day period mentioned in sub-paragraph (c).
- (10) If there are no representations within the period specified in paragraph (9)(c), the Primary Care Trust shall inform the dentist of—
- (a) its decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15,
- within 7 days of making that decision.
- (11) If there are representations, the Primary Care Trust must take them into account before reaching its decision, and shall then notify the dentist of—
- (a) its decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15,
- within 7 days of making that decision.
- (12) If the dentist requests an oral hearing, this must take place before the Primary Care Trust reaches its decision, and the Primary Care Trust shall then notify the dentist of—
- (a) its decision and the reasons for it (including any facts relied upon); and
  - (b) any right of appeal under regulation 15,
- within 7 days of making that decision.
- (13) When the Primary Care Trust notifies the dentist of any decision, it shall inform him that, if he wishes to exercise a right of appeal, he must do so within the period of 28 days beginning with the date on which the Primary Care Trust informed him of its decision and shall tell him how to proceed with any appeal.
- (14) The Primary Care Trust shall also notify the dentist of his right to have the decision reviewed in accordance with regulation 14.

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(a) 1952 c. 52.

(15) Where the Primary Care Trust decides to remove a dentist under paragraph (7), the dentist shall not be removed from its supplementary list for a period of three months, starting on the date—

- (a) on which the Primary Care Trust reaches its decision; or
- (b) any appeal is disposed of by the FHSAA,

whichever is the later.

#### **Criteria for a decision on removal**

**11.—(1)** Where a Primary Care Trust is considering whether to remove a dentist from its supplementary list using the power in regulation 10(4)(c) (an unsuitability case), it shall—

- (a) consider any information relating to the dentist which it has received in accordance with any provision of regulation 9; and
- (b) in reaching its decision, take into consideration the matters set out in paragraph (2).

(2) The matters referred to in paragraph (1) are—

- (a) the nature of any offence, investigation or incident;
- (b) the length of time since any such criminal offence, incident, conviction or investigation;
- (c) whether there are other offences, incidents or investigations to be considered;
- (d) any action taken or penalty imposed by any licensing or regulatory body, the police or the courts as a result of any such offence, incident or investigation;
- (e) the relevance of any offence, incident or investigation to his assisting in the provision of general dental services and the likely risk to patients or to public finances;
- (f) whether any criminal offence was a sexual offence to which Part I of the Sexual Offences Act 1997<sup>(a)</sup> applies, or if it had been committed in England and Wales, would have applied; and
- (g) whether the dentist has been refused admittance to, conditionally included, removed, contingently removed or is currently suspended from any list of other Primary Care Trusts or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or equivalent body for such action.

(3) Where a Primary Care Trust is considering removal of a dentist from its supplementary list under regulation 10(4)(b) it shall consider any information relating to the dentist which it has received in accordance with any provision of regulation 9, and shall take into consideration the matters set out in paragraph (4).

(4) The matters referred to in paragraph (3) are—

- (a) the nature of any incidents of fraud;
- (b) the length of time since the last incident of fraud occurred, and since any investigation into it was concluded;
- (c) whether there are any other incidents of fraud, or other criminal offences to be considered;
- (d) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such offence, investigation or incident;
- (e) the relevance of any investigation into an incident of fraud to his assisting in the provision of general dental services and the likely risk to patients or to public finances; and
- (f) whether the dentist has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list of other Primary Care Trusts or any equivalent list, and, if so, the facts relating to the matter which led to such action and the reasons given by that Primary Care Trust or equivalent body for such action.

(5) Where a Primary Care Trust is considering removal of a dentist from its supplementary list under regulation 10(4)(a) (“an efficiency case”), it shall consider any information relating to the dentist which it has received in accordance with any provision of regulation 9 and, in reaching its decision, it shall take into account the matters referred to in paragraph (6).

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(a) 1997 c. 51.

- (6) The matters referred to in paragraph (5) are—
- (a) the nature of any incident which was prejudicial to the efficiency of the general dental services that the dentist assisted in providing;
  - (b) the length of time since the last incident occurred and since any investigation into it was concluded;
  - (c) any action taken by any licensing, regulatory or other body, the police or the courts as a result of any such incident;
  - (d) the nature of the incident and whether there is a likely risk to patients;
  - (e) whether the dentist has previously failed to supply information, make a declaration or comply with an undertaking required by these Regulations; and
  - (f) whether the dentist has been refused admittance to, conditionally included in, removed, contingently removed or is currently suspended from any list of any other Primary Care Trust or any equivalent list, and if so, the facts relating to the matter which led to such action and the reasons given by the Primary Care Trust or the equivalent body for such action.

(7) In making any decision under regulation 10, the Primary Care Trust shall take into account the overall effect of any relevant incidents and offences relating to the dentist of which it is aware, whichever condition it relies on.

(8) When making a decision on any condition in regulation 10(6), the Primary Care Trust shall state in its decision on which condition it relies.

### **Contingent removal**

**12.**—(1) In an efficiency case or a fraud case the Primary Care Trust may, instead of deciding to remove a dentist from its supplementary list, decide to remove him contingently.

(2) If it so decides, it must impose such conditions as it may decide on his inclusion in its supplementary list with a view to—

- (a) removing any prejudice to the efficiency of the services in question (in an efficiency case); or
- (b) preventing further acts or omissions (in a fraud case).

(3) If the Primary Care Trust determine that the dentist has failed to comply with a condition, it may decide to—

- (a) vary the conditions imposed;
- (b) impose new conditions; or
- (c) remove him from its supplementary list.

### **Suspension**

**13.**—(1) If a Primary Care Trust is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest, it may suspend a dentist from its supplementary list—

- (a) while it decides whether or not to exercise its powers to remove under regulation 10 or contingently remove under regulation 12;
- (b) while it waits for a decision affecting the dentist of a court anywhere in the world or of a licensing or regulatory body;
- (c) where it has decided to remove the dentist, but before that decision takes effect; or
- (d) pending appeal.

(2) In a case falling within paragraph (1)(a), the Primary Care Trust must specify a period, not exceeding six months, as the period of suspension.

(3) In a case falling within paragraph (1)(b), the Primary Care Trust may specify that the dentist remains suspended after the decision referred to there for an additional period not exceeding six months.

(4) The period of suspension may extend beyond six months if—

- (a) on the application of the Primary Care Trust, the FHSAA so orders; and
- (b) the Primary Care Trust has applied under paragraph (a) before the expiry of the period of suspension, but the FHSAA has not made an order by the time it expires, in which case it continues until the FHSAA makes an order.

- (5) If the FHSAA does so order, it shall specify—
- (a) the date on which the period of suspension is to end;
  - (b) an event beyond which it is not to continue; or
  - (c) a combination of (a) and (b).
- (6) The FHSAA may, on the application of the Primary Care Trust, make a further order (complying with paragraph (5)) at any time while the period of suspension pursuant to the earlier order is still continuing.
- (7) If the Primary Care Trust suspends a dentist in a case falling within paragraph (1)(c) or (d), the suspension has effect from the date the Primary Care Trust gave him notice of the suspension—
- (a) until the expiry of any appeal period; or
  - (b) if he appeals under regulation 15, until the FHSAA has disposed of the appeal.
- (8) The Primary Care Trust may extend the period of suspension under paragraph (1)(a) or impose a further period of suspension under paragraph (3), so long as the aggregate does not exceed six months.
- (9) The effect of a suspension is that while a dentist is suspended under these Regulations he is to be treated as not being included in the Primary Care Trust's supplementary list, even though his name appears in it.
- (10) The Primary Care Trust may at any time revoke the suspension and inform the dentist of its decision.
- (11) Where a Primary Care Trust is considering suspending a dentist or varying the period of suspension under this regulation, it shall give the dentist—
- (a) notice in writing of any allegation against him;
  - (b) notice of what action the Primary Care Trust is considering and on what grounds;
  - (c) the opportunity to put his case at an oral hearing before the Primary Care Trust, on a specified day, provided that at least 24 hours notice of the hearing is given.
- (12) If the dentist does not wish to have an oral hearing or does not attend the oral hearing, the Primary Care Trust shall inform him of its decision and the reasons for it (including any facts relied upon).
- (13) If an oral hearing does take place, the Primary Care Trust shall take into account any representations made before it reaches its decision.
- (14) The Primary Care Trust may suspend the dentist with immediate effect following the hearing.
- (15) The Primary Care Trust shall notify the dentist of its decision and the reasons for it (including any facts relied upon) within 7 days of making that decision.
- (16) The Primary Care Trust shall inform the dentist of any right of review under regulation 14.
- (17) During a period of suspension—
- (a) the dentist shall be paid by his employer in accordance with a determination by the Secretary of State; and
  - (b) on the authorisation of the Primary Care Trust, the Dental Practice Board shall pay that employer such payments as the Secretary of State may determine.

## **Reviews**

- 14.—**(1) A Primary Care Trust may, and if requested in writing to do so by the dentist shall, review a Primary Care Trust decision to—
- (a) impose or vary conditions imposed under regulation 8;
  - (b) impose or vary conditions imposed under regulation 12;
  - (c) suspend a dentist under regulation 13(1)(a) or (b), except where a suspension is continuing by order of the FHSAA.

(2) A dentist may not request a review of a Primary Care Trust decision until the expiry of a three month period beginning with the date of the Primary Care Trust's decision or, in the case of a conditional inclusion under regulation 8, from the date the Primary Care Trust includes the dentist's name in the supplementary list.

(3) After a review has taken place, the dentist cannot request a further review before the expiry of six months from the date of the decision on the last review.

(4) If a Primary Care Trust decides to review its decision under this regulation to conditionally include, contingently remove or suspend a dentist, it shall give the dentist—

- (a) notice in writing of any allegation against him;
- (b) notice of what action the Primary Care Trust is considering and on what grounds;
- (c) the opportunity to make written representations to the Primary Care Trust within 28 days of the date of the notification under sub-paragraph (b); and
- (d) the opportunity to put his case at an oral hearing before the Primary Care Trust, if he so requests within the 28 day period mentioned in sub-paragraph (c).

(5) If there are no representations within the period specified in paragraph (4)(c), the Primary Care Trust shall inform the dentist of its decision, the reasons for it (including any facts relied upon) and of any right of appeal under regulation 15.

(6) If there are representations, the Primary Care Trust must take them into account before reaching its decision.

(7) The Primary Care Trust shall notify the dentist of—

- (a) its decision;
- (b) the reasons for it (including any facts relied upon);
- (c) any right of appeal under regulation 15; and
- (d) the right to a further review under this regulation,

within 7 days of making that decision.

(8) If a Primary Care Trust decides to review its decision to impose conditions under regulation 9, the Primary Care Trust may vary the conditions, impose different conditions, remove the conditions or remove the practitioner from its supplementary list.

(9) If a Primary Care Trust decides to review its decision to impose a contingent removal under regulation 12, the Primary Care Trust may vary the conditions, impose different conditions, or remove the dentist from its supplementary list.

(10) If a Primary Care Trust decides to review its decision to suspend a dentist under regulation 13(1)(a) or (b), the Primary Care Trust may decide to impose conditions or remove the dentist from its supplementary list.

(11) A Primary Care Trust may not review its decision to suspend a dentist under regulation 13(1)(c) or (d).

## **Appeals**

**15.—**(1) A dentist may appeal (by way of redetermination) to the FHSAA against a decision of a Primary Care Trust mentioned in paragraph (2) by giving notice in writing to the FHSAA.

(2) The Primary Care Trust decisions in question are—

- (a) a decision to refuse admission to the supplementary list under regulation 6(1);
- (b) a decision to impose a particular condition under regulation 8, or to vary any condition or to impose a different condition under that regulation;
- (c) any decision on a review of a conditional inclusion under regulation 8;
- (d) any decision to remove the dentist under regulation 10(3), (6) or (7);
- (e) any decision to impose a particular condition under regulation 12, or to vary any condition or to impose a different condition under that regulation; and
- (f) any decision on a review of a contingent removal under regulation 12.

(3) On appeal the FHSAA may make any decision which the Primary Care Trust could have made.



(4) Where the decision of the FHSAA on appeal is that conditions be imposed on the dentist on inclusion in the list, whether or not those conditions are identical with the conditions imposed by the Primary Care Trust, the Primary Care Trust shall ask the appellant to notify it within 28 days of the decision (or such longer period as the Primary Care Trust may agree) whether he wishes to be included on the supplementary list subject to those conditions.

(5) If the dentist notifies the Primary Care Trust that he does wish to be included in the supplementary list subject to the condition or conditions, the Primary Care Trust shall so include him.

(6) Where the FHSAA on appeal decides to impose a contingent removal—

- (a) the Primary Care Trust and the dentist may each apply to the FHSAA for the conditions imposed on the dentist to be varied, for different conditions to be imposed, or for the contingent removal to be revoked; and
- (b) the Primary Care Trust may remove the dentist from its supplementary list if it determines that he has failed to comply with a condition.

### **Notification**

**16.—**(1) Where a Primary Care Trust—

- (a) refuses to admit a dentist to its supplementary list on the grounds specified in regulation 6;
- (b) imposes conditions on his inclusion under regulation 8;
- (c) removes him under regulation 10;
- (d) removes him contingently under regulation 12; or
- (e) suspends him under regulation 13,

it shall notify the persons or bodies specified in paragraph (2), and shall additionally notify those specified in paragraph (3), if requested to do so by those persons or bodies in writing (including electronically), of the matters set out in paragraph (4).

(2) Where paragraph (1) applies, a Primary Care Trust shall notify—

- (a) the Secretary of State;
- (b) any Primary Care Trust or equivalent body that—
  - (i) has the dentist on any list or equivalent list, or
  - (ii) is considering an application for inclusion in any list or equivalent list by the dentist;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Northern Ireland Executive;
- (f) the General Dental Council or any other appropriate regulatory body;
- (g) the Local Dental Committee for its area; and
- (h) where it is a fraud case, the National Health Service Counter Fraud Service.

(3) The persons or bodies to be additionally notified in accordance with paragraph (1) are persons or bodies that can establish that they are or were employing or that are considering employing the dentist in a professional capacity.

(4) The matters referred to in paragraph (1) are—

- (a) name, address and date of birth of the dentist;
- (b) his professional registration number;
- (c) date and copy of the decision of the Primary Care Trust; and
- (d) a contact name of a person in the Primary Care Trust for further enquiries.

(5) The Primary Care Trust shall send to the dentist concerned a copy of any information about him provided to the persons or bodies listed in paragraph (2) or (3), and any correspondence with that person or body relating to that information.

(6) Where the Primary Care Trust has notified any of the persons or bodies specified in paragraph (2) or (3) of the matters set out in paragraph (4), it may, in addition, if requested by that person or body, notify that person or body of any evidence that was considered, including any representations from the dentist.

(7) Where a Primary Care Trust is notified by the FHSAA that it has imposed a national disqualification on a dentist who was, or had applied to be included, in its supplementary list, it shall notify the persons or bodies listed in paragraph (2)(b), (g) and (h) and paragraph (3).

(8) Where a decision is changed on review or appeal, or a suspension lapses, the Primary Care Trust shall notify the persons or bodies that were notified of the original decision of the later decision or the fact that that suspension has lapsed.

#### **Amendment of or withdrawal from supplementary list**

17.—(1) A dentist shall, unless it is impracticable for him to do so, give notice to the Primary Care Trust within 28 days of any occurrence requiring a change in the information recorded about him in the supplementary list and of any change of his private address.

(2) Where a dentist intends to withdraw from the supplementary list, unless it is impracticable for him to do so, he shall give notice in writing to the Primary Care Trust at least three months in advance of that date.

(3) A dentist shall give notice in writing to the Primary Care Trust that he intends to withdraw from its supplementary list if he is accepted on to the dental list or services list of the Primary Care Trust, or on to any list of another Primary Care Trust.

(4) The Primary Care Trust shall on receiving notice—

(a) from any dentist pursuant to paragraph (1), amend its supplementary list as soon as possible;

(b) pursuant to paragraph (2), so amend its supplementary list, either—

(i) on the date which falls three months after the date of the notice, or

(ii) on the date from which the Primary Care Trust has agreed that the withdrawal shall take effect,

whichever is the earlier; or

(c) pursuant to paragraph (3), remove the dentist's name from its supplementary list as soon as it confirms that that dentist has been accepted on that other list.

(5) A dentist may withdraw a notice given pursuant to paragraph (1) or (2) at any time until the Primary Care Trust removes his name from its supplementary list.

(6) A notice given pursuant to paragraph (3) may not be withdrawn.

#### **Restrictions on withdrawal from list**

18.—(1) Where a Primary Care Trust is investigating a dentist—

(a) for the purpose of deciding whether or not to exercise its powers to remove him under regulation 10 or contingently remove him under regulation 12; or

(b) who has been suspended under regulation 13(1)(a),

the dentist may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the matter has been finally determined by the Primary Care Trust.

(2) Where a Primary Care Trust has decided to remove a dentist from its supplementary list under regulation 10(3) to (6) or contingently remove under regulation 12, but has not yet given effect to its decision, the dentist may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent.

(3) Where a Primary Care Trust has suspended a dentist under regulation 13(1)(b), the dentist may not withdraw from any list kept by a Primary Care Trust in which he is included, except where the Secretary of State has given his consent, until the decision of the relevant court or body is known and the matter has been considered and finally determined by the Primary Care Trust.

#### **Review periods on national disqualification**

19. The period for review shall be the different period specified below, instead of that in section 49N(8), where the circumstances are that—

(a) on making a decision to impose a national disqualification, the FHSAA states that it is of the opinion that the criminal or professional conduct of the dentist is such that

there is no realistic prospect of a further review being successful, if held within the period specified in section 49N(8)(a), in which case the reference to “two years” in that provision shall be a reference to five years;

- (b) on the last review by the FHSAA of a national disqualification the dentist was unsuccessful and the FHSAA states that it is of the opinion that there is no realistic prospect of a further review being successful if held within a period of three years beginning with the date of its decision on that review, in which case the reference to “one year” in section 49N(8)(b) shall be a reference to three years;
- (c) the FHSAA states that it is of the opinion that, because a criminal conviction considered by the FHSAA in reaching the decision that has effect has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed; or
- (d) the FHSAA is of the opinion that because the decision of a licensing, regulatory or other body has been quashed or the penalty reduced on appeal, there is a need for an immediate review, in which case the reference to “two years” or “one year” in section 49N(8) shall be a reference to the period that has already elapsed.

### **Disclosure of Information**

**20.** The Primary Care Trust may disclose information supplied to it or acquired by it pursuant to these Regulations to any of the following—

- (a) the Secretary of State;
- (b) any other Primary Care Trust or equivalent body, which—
  - (i) has a dentist to whom that information relates on any of its lists, or
  - (ii) is considering an application from such a dentist for inclusion on any of its lists;
- (c) the Scottish Executive;
- (d) the National Assembly for Wales;
- (e) the Dental Practice Board;
- (f) the General Dental Council or any other licensing or regulatory body;
- (g) any organisation or employer that, to the knowledge of the Primary Care Trust, employs or uses the services of the dentist to whom that information relates in a professional capacity; and
- (h) where an allegation of fraud is being considered, the National Health Service Counter Fraud Service.

### **Transitional provisions**

**21.—(1)** Subject to paragraphs (3), (4), (5), (6) and (9), any dentist, who was assisting in the provision of general dental services on 2nd March 2003, may continue to do so, notwithstanding regulation 3(2), until—

- (a) 3rd September 2003; or
- (b) the date on which the Primary Care Trust notifies that dentist of its decision under regulation 4(9),

whichever is the earlier, provided that that dentist applies, in accordance with these Regulations, to a Primary Care Trust to be included in its supplementary list not later than 3rd June 2003.

(2) Subject to paragraphs (3), (4), (5), (6) and (9), any dentist, not falling within paragraph (1), who has applied to be included in a supplementary list on or before 3rd June 2003, may assist in the provision of general dental services after the date of that application, notwithstanding regulation 3(2), until—

- (a) 3rd September 2003; or
- (b) the date on which the Primary Care Trust notifies that dentist of its decision under regulation 4(9),

whichever is the earlier.

(3) Any dentist to whom paragraph (1) or (2) applies shall comply with regulation 9, if any of the events therein specified occur, as though he were included in the supplementary list of a Primary Care Trust in whose area he is assisting in the provision of general dental services.

(4) Subject to paragraph (9), in the case of an application made on or before 3rd June 2003, the period of 21 days referred to in regulation 4(9) shall begin on 3rd September 2003, unless the Primary Care Trust decides that application before 3rd September 2003.

(5) A dentist may not assist in the provision of general dental services by virtue of paragraph (1) or (2) during any period in which he is the subject of a suspension notice given by a Primary Care Trust under paragraph (6).

(6) A Primary Care Trust may give a suspension notice to a dentist to whom paragraph (1) or (2) applies where it is satisfied that it is necessary to do so for the protection of members of the public or is otherwise in the public interest.

(7) A Primary Care Trust may withdraw a suspension notice it has given under paragraph (6) at any time.

(8) During a period of suspension—

(a) the dentist shall be paid by his employer in accordance with a determination by the Secretary of State; and

(b) on the authorisation of the Primary Care Trust, the Dental Practice Board shall pay that employer such payments as the Secretary of State may determine.

(9) Where a Primary Care Trust—

(a) has received an application from a dentist to whom paragraph (1) or (2) applies; and

(b) becomes aware in respect of that dentist of any of the matters listed in regulation 10(1),

it shall immediately decide the dentist's application to be included in its supplementary list.

(10) A Primary Care Trust may publish a list of dentists whose applications it has approved for inclusion in its supplementary list prior to 3rd September 2003.

## PART II

### Amendments to the Dental Regulations

**22.**—(1) Regulation 9 of the Dental Regulations(a) (removal from dental list on grounds of age) shall be amended as follows—

(a) paragraph (1) is revoked;

(b) for paragraph (2) there shall be substituted the following—

“(2) A Primary Care Trust shall, on 1st April in every year, remove from the dental list the name of any dentist included in that list who has attained the age of 70 in the period of 12 months ending on 31st March preceding that 1st April.”; and

(c) in paragraphs (3) and (4) the expression “(1) or” after the word “paragraph”, in each of the three places where it occurs, shall be deleted.

(2) Schedule 1 to the Dental Regulations (conditions of service for dentists) shall be amended by—

(a) inserting in paragraph 31H(b) (declaration of convictions etc.), after sub-paragraph (c) the following new sub-paragraphs—

“(cc) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995(c) or a penalty under section 115A of the Social Security Administration Act 1992(d);

(cd) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);”; and

(b) substituting for sub-paragraph 35(10A)(e) (deputies and assistants), the following—

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(a) Regulation 9 was amended by S.I. 2001/2421 and 2002/2469.

(b) Paragraph 31H was added by S.I. 2001/3741 and amended by S.I. 2002/2469.

(c) 1995 c. 46.

(d) 1992 c. 5; section 115A was inserted by section 15 of the Social Security Administration (Fraud) Act 1997 (c. 47).

(e) Sub-paragraph (10A) was inserted by S.I. 1995/3092 and amended, in relation to England, by S.I. 2001/3741.

- “35(10A) A dentist may only employ a dentist as a deputy or assistant for the purposes of the provision of general dental services who—
- (a) is included in—
    - (i) a dental list,
    - (ii) a services list prepared under section 28DA of the Act<sup>(a)</sup> or section 8ZA of the 1997 Act<sup>(b)</sup>, or
    - (iii) a supplementary list prepared under regulation 3(1) of the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003;
  - (b) falls within regulation 21(1) or (2) of the National Health Service (General Dental Services Supplementary List) and (General Dental Services) Amendment Regulations 2003, or
  - (c) is undertaking dental vocational training, during the first two months of that training”.
- (3) Schedule 2 to the Dental Regulations (information and undertaking to be included in an application for inclusion in the dental list) shall be amended by inserting in paragraph 5B(c), after sub-paragraph (c), the following new sub-paragraphs—
- “(cc) has accepted and agreed to pay either a procurator fiscal fine under section 302 of the Criminal Procedure (Scotland) Act 1995 or a penalty under section 115A of the Social Security Administration Act 1992;
  - (cd) has, in summary proceedings in Scotland in respect of an offence, been the subject of an order discharging him absolutely (without proceeding to conviction);”.
- (4) In this Part “the Dental Regulations” means the National Health Service (General Dental Services) Regulations 1992<sup>(d)</sup>.

*David Lammy*  
Parliamentary Under Secretary of State  
Department of Health

7th February 2003

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(a) Section 28DA was inserted by section 26(1) of the Health and Social Care Act 2001 (c. 15) (“the 2001 Act”).  
 (b) Section 8ZA was added by the 2001 Act and amended by the National Health Service Reform and Health Care Professions Act 2002 (c. 17), Schedule 3, paragraph 3.  
 (c) Paragraph 5B was inserted by S.I. 2001/3741 and amended by S.I. 2002/2469.  
 (d) S.I. 1992/661.

## EXPLANATORY NOTE

*(This note is not part of the Regulations)*

These Regulations provide for the preparation and publication by Primary Care Trusts of supplementary lists of dentists assisting in the provision of general dental services.

Regulation 2 is an interpretation provision.

Regulation 3 provides that each Primary Care Trust must prepare and publish a supplementary list. It also provides that no dentist may assist in the provision of general dental services unless on such a list or a dental list or services list (except a dentist in the first 2 months of vocational training).

Regulation 4 sets out how to apply to be included in the list, requires certain information to be given and prescribes the time within which the Primary Care Trust must decide whether or not to include a dentist in the list or to defer making such a decision. It relaxes those requirements for a dentist who is on the dental or services list of that Trust.

Regulation 5 provides for a dentist to be readmitted to the supplementary list on a successful appeal against conviction.

Regulation 6 sets out the grounds on which the Primary Care Trust may or must refuse to admit a dentist to the supplementary list, and the matters to which it must have regard.

Regulation 7 sets out the circumstances in which a Primary Care Trust may defer consideration of an application to include a dentist in the supplementary list and the procedure to be followed.

Regulation 8 allows Primary Care Trusts to enter a dentist's name on the supplementary list subject to condition. It also allows a dentist's name to be included in that list, until any appeal has been decided, provided he agrees to be bound by the condition until the appeal is determined.

Regulation 9 provides for a requirement that a dentist notify the Primary Care Trust in writing, within 7 days, if he, or a company of which he is a director, incurs any criminal convictions or other specified matters occur.

Regulation 10 provides for the mandatory removal from its supplementary list by a Primary Care Trust of any dentist convicted of murder or of a criminal offence and sentenced to over 6 months, and for the discretionary removal on specified grounds.

Regulation 11 sets out the criteria for decisions on discretionary removals from the supplementary list.

Regulation 12 allows a Primary Care Trust to impose conditions on a dentist who is included in the supplementary list, and for him to be removed if he fails to comply with those conditions.

Regulation 13 provides for a Primary Care Trust to suspend a dentist from the supplementary list, if certain conditions are met, for the procedure to be then followed and provides for payment to and in relation to suspended dentists.

Regulation 14 provides for review and the procedure to be followed by Primary Care Trusts where the Primary Care Trust decides to conditionally include, conditionally remove, or suspend a dentist from the supplementary list.

Regulation 15 provides for appeals from specified decisions to be heard by the FHSAA.

Regulation 16 provides for a Primary Care Trust to notify specified persons of specified information relating to decisions to refuse to admit, impose conditions, remove (or contingently remove) or suspend a dentist from the supplementary list.

Regulation 17 provides for the circumstances in which a dentist may or may not withdraw from the supplementary list and regulation 18 provides for the circumstances in which a dentist may not withdraw from the supplementary list.

Regulation 19 amends the statutory period for review set out in section 49N of the Act in specified circumstances.

Regulation 20 provides for the disclosure of information to specified persons.

Regulation 21 makes transitional provision for dentists, already assisting in providing general dental services before the coming into force of these Regulations, to continue to do so for a period of not more than six months, while their applications for inclusion in a supplementary list are determined. It also makes like provision for those applying for inclusion in a list in the first three months after the coming into force of these Regulations.

Regulation 22 amends the National Health Service (General Dental Services) Regulations 1992 by changing the age at which a dentist must be removed from a dental list from 65 to 70 years of age. It also amends Schedules 1 and 2 by adding requirements for dentists to report their having incurred an absolute discharge in Scotland or accepted certain penalties as an alternative to prosecution. It also provides that no principal dentist may employ a dentist to assist in providing general dental services unless that dentist is on a supplementary list, a dental list or a services list (except a dentist in the first 2 months of vocational training).

**2003 No. 250**

**NATIONAL HEALTH SERVICE, ENGLAND**

**The National Health Service (General Dental Services  
Supplementary List) and (General Dental Services)  
Amendment Regulations 2003**

£4.00

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Printed and published in the UK by The Stationery Office Limited  
under the authority and superintendence of Carol Tullo, Controller of  
Her Majesty's Stationery Office and Queen's Printer of Acts of Parliament.  
E1786 2/2003 121786 19585

ISBN 0-11-044844-8



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